

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1851-WQ-E TCEQ ID: RN105372312 CASE NO.: 36869**  
**RESPONDENT NAME: FOUR D. CONSTRUCTION, INC.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** Pleasant Valley Road and Wells Road, Wylie, Dallas County

**TYPE OF OPERATION:** construction site

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 7, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Ms. Cheryl Thompson, Water Enforcement Section, MC R-4, (817) 588-5886

**TCEQ Regional Contact:** Mr. Sid Slocum, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5901

**Respondent:** Mr. Jerry C. Daniels, President, Four D. Construction, Inc., 11200 Seagoville Road, Balch Springs, Texas 75180

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> N/A</p> <p><b>Date of Investigation Relating to this Case:</b> August 28, 2008</p> <p><b>Date of NOE Relating to this Case:</b> January 14, 2009</p> <p><b>Background Facts:</b> The EDRP was filed April 7, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDRP. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>WQ:</b> Failed to obtain authorization to discharge storm water associated with construction activities to water in the state [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CFR § 122.26(c)].</p>	<p><b>Total Assessed:</b> \$3,120</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$3,120</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall implement the following corrective measures:</p> <ol style="list-style-type: none"><li>1. Within 30 days:<ol style="list-style-type: none"><li>a. Submit a Notice of Intent letter, including associated application fees to TCEQ; and</li><li>b. Develop and implement a Storm Water Pollution Prevention Plan that includes specific measures to be taken to stabilize the Site.</li></ol></li><li>2. Within 45 days, submit written certification demonstrating compliance.</li></ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Nov-2008	Screening	24-Nov-2008	EPA Due	
	PCW	12-Mar-2009				

## RESPONDENT/FACILITY INFORMATION

Respondent	Four D. Construction, Inc.		
Reg. Ent. Ref. No.	RN105372312		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	36869	No. of Violations	1
Docket No.	2008-1851-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

### TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 **\$3,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **4.0% Enhancement** Subtotals 2, 3, & 7 **\$120**

Notes The Respondent received two previous NOV's for non-similar violations.

Culpability **No** **0.0% Enhancement** Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**Economic Benefit **0.0% Enhancement\*** Subtotal 6 **\$0**

Total EB Amounts	\$92
Approx. Cost of Compliance	\$2,000

\*Capped at the Total EB \$ Amount

### SUM OF SUBTOTALS 1-7

Final Subtotal **\$3,120**

### OTHER FACTORS AS JUSTICE MAY REQUIRE

**0.0%**Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$3,120**

### STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$3,120**

### DEFERRAL

**0.0%**

Reduction

Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

### PAYABLE PENALTY

**\$3,120**

Screening Date 24-Nov-2008

Docket No. 2008-1851-WQ-E

PCW

Respondent Four D. Construction, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36869

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105372312

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 4%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The Respondent received two previous NOVs for non-similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 4%

<b>Screening Date</b> 24-Nov-2008		<b>Docket No.</b> 2008-1851-WQ-E		<b>PCW</b>																							
<b>Respondent</b> Four D. Construction, Inc.				<small>Policy Revision 2 (September 2002)</small>																							
<b>Case ID No.</b> 36869				<small>PCW Revision October 30, 2008</small>																							
<b>Reg. Ent. Reference No.</b> RN105372312																											
<b>Media [Statute]</b> Water Quality																											
<b>Enf. Coordinator</b> Cheryl Thompson																											
<b>Violation Number</b>		<input type="text" value="1"/>																									
<b>Rule Cite(s)</b>		<input type="text" value="30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)"/>																									
<b>Violation Description</b>		<input type="text" value="Failed to obtain authorization to discharge storm water associated with construction activities to water in the state. Specifically, the Respondent failed to stabilize the site prior to terminating permit coverage."/>																									
<b>Base Penalty</b>					<input type="text" value="\$10,000"/>																						
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> <td></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td rowspan="2" style="text-align: center; vertical-align: middle;"><b>OR</b></td> <td style="text-align: center;">Release</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: center; vertical-align: middle;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> <tr> <td style="text-align: center;">Actual Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>								<b>Harm</b>						Major	Moderate	Minor		<b>OR</b>	Release	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	Actual Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Harm</b>																									
		Major	Moderate	Minor																							
<b>OR</b>	Release	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>																						
	Actual Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																							
<b>&gt;&gt; Programmatic Matrix</b>																											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <td colspan="3" style="text-align: center;"><b>Falsification</b></td> <td></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td colspan="2"></td> <td><input type="text" value="X"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center; vertical-align: middle;"><b>Percent</b> <input type="text" value="10%"/></td> </tr> </table>								<b>Falsification</b>						Major	Moderate	Minor				<input type="text" value="X"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>				
		<b>Falsification</b>																									
		Major	Moderate	Minor																							
		<input type="text" value="X"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>																						
<b>Matrix Notes</b>		<input type="text" value="100% of the rule requirement was not met."/>																									
<b>Adjustment</b>					<input type="text" value="\$9,000"/>																						
					<input type="text" value="\$1,000"/>																						
<b>Violation Events</b>																											
<b>Number of Violation Events</b>		<input type="text" value="3"/>		<input type="text" value="89"/> <b>Number of violation days</b>																							
<small>mark only one with an x</small>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">weekly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td style="text-align: center;">X</td></tr> <tr><td style="text-align: center;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">annual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">single event</td><td><input type="text"/></td></tr> </table>			daily	<input type="text"/>	weekly	<input type="text"/>	monthly	X	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$3,000"/>								
daily	<input type="text"/>																										
weekly	<input type="text"/>																										
monthly	X																										
quarterly	<input type="text"/>																										
semiannual	<input type="text"/>																										
annual	<input type="text"/>																										
single event	<input type="text"/>																										
<input type="text" value="Three monthly events are recommended from the period of August 28, 2008 (date of investigation) to November 24, 2008 (date of screening)."/>																											
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> <b>Reduction</b>		<input type="text" value="\$0"/>																							
		<small>Before NOV    NOV to EDRP/Settlement Offer</small>																									
Extraordinary		<input type="text"/>																									
Ordinary		<input type="text"/>																									
N/A		X    (mark with x)																									
<b>Notes</b>		<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																									
<b>Violation Subtotal</b>					<input type="text" value="\$3,000"/>																						
<b>Economic Benefit (EB) for this violation</b>																											
<b>Estimated EB Amount</b>		<input type="text" value="\$92"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$3,120"/>																							
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<input type="text" value="\$3,120"/>																						

## Economic Benefit Worksheet

Respondent Four D. Construction, Inc.

Case ID No. 36869

Reg. Ent. Reference No. RN105372312

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	28-Aug-2008	31-Jul-2009	0.92	\$92	n/a	\$92
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with preparing, submitting, and obtaining a permit and developing and implementing a storm water pollution prevention plan. The date required is date the violation was first documented. The final date is the expected date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$92

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600488589 Four D. Construction, Inc. Classification: AVERAGE Rating: 3.43  
 Regulated Entity: RN105372312 FOUR D CONSTRUCTION TWIN LAKES OUTFALL SANITARY SEWER Classification: AVERAGE Site Rating: 12.00  
 ID Number(s):  
 Location: PLEASANT VALLEY RD AND WELLS RD IN WYLIE TX 75180  
 TCEQ Region: REGION 04 - DFW METROPLEX  
 Date Compliance History Prepared: December 18, 2008  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: December 02, 2003 to December 02, 2008  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Cheryl Thompson Phone: (817) 588-5886

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	01/15/2008	(614218)
2	04/23/2008	(640128)
3	11/13/2008	(702220)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

1	Date: 11/19/2007 (599909)
Self	NO Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)
	CGP Part II-Section D(3)(d) PERMIT
Description:	Failure to post a copy of the NOI in a location that is readily available for viewing.
Self	NO Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)
	CGP Part III-Section D(2) PERMIT
Description:	Failure to post a notice near the main entrance of the construction site.
Self	NO Classification: Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)
	CGP Part III-Section A(2) PERMIT
Description:	Failure to describe each operators' responsibilities in the SWP3.
Self	NO Classification: Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)
	CGP Part III-Section F(1)(b) PERMIT
Description:	Failure to include a description of the intended schedule or sequence of major soil disturbing activities.
Self Report?	NO Classification: Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)
	CGP Part III-Section F(1)(f) PERMIT
Description:	Failure to include a complete site map to reflect the existing conditions on the site.
Self Report?	NO Classification: Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)
	CGP Part III-Section F(2)(a)(i) PERMIT

Description:	Failure to design erosion and sediment controls to retain sediment on-site.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(3)(a) PERMIT		
Description:	Failure to construct a sediment basin or identify equivalent measures in the SWP3.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(2)(a)(iv) PERMIT		
Description:	Failure to remove off-site sediment accumulations.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(7) PERMIT		
Description:	Failure to maintain best management practices (BMPs) in an effective operating condition.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(9) PERMIT		
Description:	Failure to identify and ensure the implementation of appropriate pollution prevention measures for all authorized non storm water discharges.		
2	Date: 01/16/2008 (614218)		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part II-Section D(3)(d) PERMIT		
Description:	Failure to post a copy of the NOI in a location that is readily available for viewing.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section D(2) PERMIT		
Description:	Failure to post a notice near the main entrance of the construction site.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section A(2) PERMIT		
Description:	Failure to describe each operators' responsibilities in the SWP3.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(1)(f) PERMIT		
Description:	Failure to include a complete site map to reflect the existing conditions on the site.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(2)(a)(i) PERMIT		
Description:	Failure to design erosion and sediment controls to retain sediment on-site.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(2)(a)(iv) PERMIT		
Description:	Failure to remove off-site sediment accumulations.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(7) PERMIT		
Description:	Failure to maintain best management practices (BMPs) in an effective operating condition.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) CGP Part III-Section F(9) PERMIT		
Description:	Failure to identify and ensure the implementation of appropriate pollution prevention measures for all authorized non storm water discharges.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
FOUR D. CONSTRUCTION, INC.,  
RN105372312**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-1851-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, 40 CODE OF FEDERAL REGULATIONS pt. 122 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Four D. Construction, Inc. ("Four D.").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Four D. operates a construction site located at Pleasant Valley Road and Wells Road, Wylie, Dallas County, Texas (the "Site").
2. The Site discharged waste into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an investigation on August 28, 2008, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Four D. failed to obtain authorization to discharge storm water associated with construction activities to water in the state. Specifically, Four D. failed to stabilize the Site prior to terminating permit coverage.
4. Four D. received notice of the violations on or about January 19, 2009.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement

Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Four D. Construction, Inc.” (the “EDPRP”) in the TCEQ Chief Clerk’s office on April 7, 2009.

6. By letter dated April 7, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Four D. with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating that Four D. received notice of the EDPRP.
7. More than 20 days have elapsed since Four D. received notice of the EDPRP, provided by the Executive Director. Four D. failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Four D. is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, 40 CODE OF REGULATIONS pt. 122, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Four D. failed to obtain authorization to discharge storm water associated with construction activities to water in the state, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Four D. with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Four D. failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Four D. and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Four D. for violations of the Texas Water Code within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of three thousand one hundred twenty dollars (\$3,120.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Four D. is assessed an administrative penalty in the amount of three thousand one hundred twenty dollars (\$3,120.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Four D.'s compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Four D. Construction, Inc.; Docket No. 2008-1851-WQ-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Four D. shall implement the following corrective measures:

- a. Within 30 days after the effective date of this Order, Four D. shall submit a Notice of Intent letter, including associated application fees, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c) to:

Wastewater Permitting Section  
Water Quality Division, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Order, Four D. shall develop and implement a Storm Water Pollution Prevention Plan that includes specific measures to be taken to stabilize the Site, in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4).
- c. Within 45 days after the effective date of this Order, Four D. shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Four D. shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Sid Slocum, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

- 3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Four D. Four D. is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Four D. fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Four D.'s failure to comply is not a violation of this Order. Four D. shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Four D. shall notify the Executive Director within seven days after Four D. becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Four D. shall be made in writing to the Executive Director. Extensions are not effective until Four D. receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Four D. if the Executive Director determines that Four D. has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF REBECCA M. COMBS**

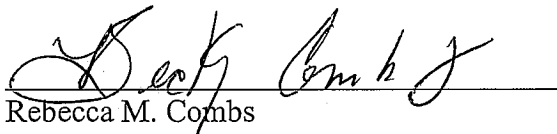
STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

"My name is Rebecca M. Combs. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Four D. Construction, Inc.' (the 'EDPRP') was filed with the Office of the Chief Clerk on April 7, 2009.

I sent the EDPRP to Four D. at its last known address on April 7, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as 'unclaimed'. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Four D. received notice of the EDPRP. Four D. failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference".



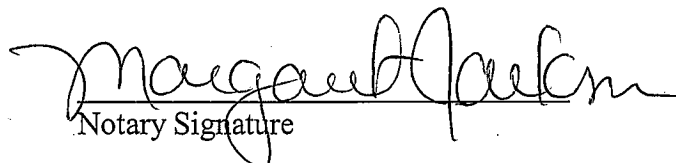
Rebecca M. Combs

Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rebecca M. Combs, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 7 day of July 2009.

  
Notary Signature

